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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ORANGE HOLDINGS TWO, LLC, Plaintiff and Appellant, v. ORANGE COUNTY ASSESSMENT APPEALS BOARD, Defendant and Respondent.	G057672 (Super. Ct. No. 30-2014-00736502) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James L. Crandall, Judge. Affirmed.

Gore & Associates and Mark J. Sarni for Plaintiff and Appellant.

Leon J. Page, County Counsel, and Rebecca S. Leeds, Deputy County Counsel, for Defendant and Respondent.

INTRODUCTION

Orange Holdings Two, LLC (Orange Holdings), appeals from a judgment entered after the trial court granted the motion for judgment on the pleadings of respondent Orange County Assessment Appeals Board (the Board). Orange Holdings asserts it was entitled to a writ of mandate to compel the Board to vacate a decision setting the base year value of its condominiums at $600,000, which would reinstitute an earlier value of $315,000. Orange Holdings contended that the Board's determination of the later value violated its due process rights.

We affirm the judgment. Under both the California Constitution and the Revenue and Taxation Code, a writ of mandate does not lie to challenge the merits of a property tax assessment. The taxpayer's remedy is to pay the tax and challenge the payment by means of an action against the taxing authority, in this case the County of Orange. Orange Holdings has just such an action in the works in superior court.

FACTS

Orange Holdings is the successor in interest to a group of individuals and entities that owned a development consisting of 18 fourplex apartment units in Westminster.[1] The development was converted to condominiums in the 1990s.

In 2010, Orange Holdings applied for a changed property tax assessment, asserting that the value of some of the properties had declined. The assessor set the base year value at $315,000. Orange Holdings asserted the value was $295,000.

The Board held a hearing on September 11, 2013. The sole issue was the base year value assessment of the condominiums. Because the buildings were essentially identical, the parties agreed the base year value assessment determined for a "proxy" building would apply to all the other buildings in the development.

[1] Although some of the actions related in the statement of facts were taken by Orange Holdings' predecessors in interest, for convenience we refer to everyone as "Orange Holdings."

In July 2013, two months before the hearing, the assessor increased the base year value assessment from the original $315,000 to $600,000. The deputy assessor brought the increase to the Board's attention at the beginning of the hearing. After hearing evidence from both sides, the Board issued its decision in January 2014. It "sustain[ed] the Assessor" and found that "the value of the subject property is $315,000."

Orange Holdings filed a complaint in July 2014. The complaint is not included in the record, but it appears from the register of actions that the defendants were the County of Orange (County) and the Board. The third amended complaint, filed in April 2016, is the operative pleading.

In January 2016, before the third amended complaint was filed, the Board convened to correct what it characterized as a "clerical error" in the January 2014 decision. Although the assessor had increased the value of the properties from $315,000 to $600,000 in July 2013 – and these increases were at issue at the 2013 hearing – the Board had overlooked them and "sustain[ed] the Assessor" at the earlier figure. The revised decision corrected the values to include the increases listed in the assessor's hearing exhibit.[2]

The third amended complaint alleges four causes of action.[3] The first two, for a tax refund and for declaratory relief, are stated against the County. The last two, for declaratory relief and for a writ of administrative mandamus, are stated against the Board.

The allegations against the Board were that it had violated Orange Holdings' due process rights by correcting the clerical error in January 2016, which, Orange Holdings asserts, was not a clerical error at all. Orange Holdings' position was that the 2014 decision assessing the properties at $315,000 was a final decision, and the

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[2] Orange Holdings' main contention at the hearing on September 11, 2013, was that the assessor had failed to take into account unusually high HOA dues for the condominiums, which depressed market value. The assessor's position was that HOA dues did not figure in fair market value for assessment purposes. Counsel for Orange Holdings conceded that if the assessor was right, "the values are more in the range of, you know, 5 to $600,000 and they are [stating] [$]7[00,000]. 7 is just way too high."

[3] Orange Holdings dismissed a fifth cause of action, for negligence, in August 2016.

Board could not change it in the guise of correcting a clerical error. Orange Holdings wanted the court to reverse the Board's January 2016 assessment and declare that the Board had no authority to change the $315,000 assessment rendered in January 2014.

On October 25, 2018, the court heard argument on Orange Holdings' petition for writ of mandate. It denied the petition and issued a statement of decision, explaining its ruling. The court found Orange Holdings had received a fair hearing with due process. The court concluded the Board's decision rested on substantial evidence and the revision of the assessment amount was a proper correction of a clerical error.

On May 15, 2019, the trial court entered judgment in favor of the Board after granting its motion for judgment on the pleadings on Orange Holdings' third and fourth causes of action. The court dismissed the Board from the case.

DISCUSSION

Orange Holdings has identified three issues for our review: The trial court erred in denying Orange Holdings request for a writ of mandate; the court erred in granting the motion for judgment on the pleadings; and the statement of decision was deficient. Orange Holdings has also asked us to issue an advisory opinion regarding the Board's future revision of assessments as "clerical errors." We do not issue advisory opinions. (See *Salazar v. Eastin* (1995) 9 Cal.4th 836, 860.)

Although Orange Holdings raises a number of issues on appeal, there is actually only one dispositive issue. Orange Holdings cannot state a cause of action for writ of mandate against the Board. Its sole remedy for an incorrect base year value assessment is an action against the taxing authority, in this case, the County.[4] Orange Holdings has already sued the County for a tax refund based on this set of facts.

[4] Although failure to state a cause of action was not the basis for the court's holdings in either the ruling on the petition for writ of mandate or the order granting judgment on the pleadings, the issue was mentioned below and has been briefed by both sides on appeal. We may consider an issue of law raised for the first time on appeal. (See *Prima Donna Development Corp. v. Wells Fargo Bank, N.A.* (2019) 42 Cal.App.5th 22, 43.)

The California Constitution provides, "No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature." (Cal. Const., art. XIII, §32.) Revenue and Taxation Code section 4807 provides in pertinent part, "No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected."

As we explained in *William Jefferson & Co., Inc. v. Orange County Assessment Appeals Bd. No. 2* (2014) 228 Cal.App.4th 1 (*Jefferson*), "Any action challenging the merits of an assessor's base year value determination is a refund action that must be brought against the county or the city that collected the tax even if the action does not expressly seek a refund or disclaims the right to a refund." (*Id.* at p. 12, italics added.) Moreover, "[M]andamus did not lie to correct an erroneous base year value or assessment." (*Id.* at p. 13; see also *Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1114.)

The plaintiff in *Jefferson* sought to compel the appeals board to "vacate its decision denying [plaintiff's] application for changed assessment and to issue a new decision granting the application and directing the Assessor to set the property's base year value at $271,000." (*Jefferson, supra,* 228 Cal.App.4th at p. 13.) We held that our Constitution and case law "compel[led] us to treat [plaintiff's] lawsuit as a tax refund action that [plaintiff] may not maintain against the Appeals Board." (*Ibid.*)

Orange Holdings seeks an order to compel the Board to reverse its 2016 decision and nullify it, which would return the properties' base value to $315,000, per the January 2014 decision. The authority we've discussed compels us to treat Orange Holdings' lawsuit as a tax refund action.

Orange Holdings insists its lawsuit against the Board does not challenge the merits of the Board's decision, but rather the procedure by which it arrived at the decision, which Orange Holdings characterizes as the denial of its due process rights. This, it says, can be done through a writ of mandate, citing the portion of the *Jefferson* case that refers to *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948 (*Sunrise*). *Sunrise*, we explained, "did not involve a challenge to the merits of the assessor's base year value determination." (*Jefferson, supra,* 228 Cal.App.4th at p. 13.) *Sunrise* dealt with an entirely different situation.

The problem in *Sunrise*, as we explained in *Jefferson*, was that the assessment appeals board dismissed an appeal regarding change of ownership – which is not a "judgment as to value" – without a hearing because the appeal was brought more than four years after the assessment. The board held that it did not have jurisdiction to grant the application because of the four-year time limit of Revenue and Taxation Code section 80.[5] The *Sunrise* court held that mandamus lies "to compel the board to hold a hearing when the board is empowered to decide an issue in the first instance but erroneously fails to do so." (*Jefferson, supra,* 228 Cal.App.4th at p. 14.)

In this case, however, the Board did not erroneously fail to hold a hearing; it held a hearing. Moreover, Orange Holdings did not ask the trial court to compel the Board to hold a hearing. Orange Holdings asked the court to reverse the Board's decision of January 2016 and hold that assessment null and void.

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[5] Revenue and Taxation Code section 80, subdivision (a), provides: "An application for reduction in the base-year value of an assessment on the current local roll may be filed during the regular filing period for that year as set forth in Section 1603 or Section 1840, subject to the following limitations: [¶] . . . [¶] (4) The base-year value determined pursuant to Section 51.5 shall be conclusively presumed to be the base-year value unless an application for equalization is filed during the appropriate equalization period for the year in which the error is corrected or in any of the three succeeding years. Once an application is filed, the base-year value determined pursuant to that application shall be conclusively presumed to be the base-year value for that assessment."

Revenue and Taxation Code section 51.5 governs corrections of errors with respect to base-year value. Section 51.5, subdivision (b), restricts corrections of errors in "the exercise of an assessor's judgment as to value" to a four-year period. There is no time limit on the correction of other kinds of errors. (Rev. & Tax. Code, § 51.5, subd. (c).)

As we explained, if an appeals board refused to hold a hearing at all, "the proper remedy was to order the appeals board to perform its statutorily mandated duty . . . because mandamus lies to compel an agency to perform its duties, *but not to control the agency's discretion in performing those duties. . . .* [*A*] *court may not step into an agency's shoes and perform its duties.*" (*Jefferson, supra,* 228 Cal.App.4th at p. 14, italics added.)

A challenge to the merits of an assessor's base year value determination is a tax refund action, and it cannot be brought against the Board. If the process by which the Board determined the base year value was defective, that is part of the merits.

DISPOSITION

The judgment is affirmed.[6] Respondent is to recover its costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.

[6] Because the unavailability of a writ of mandate against the Board disposes of the entire case, we need not address Orange Holdings' issue regarding the statement of decision.